

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15838 of the Church of Jesus Christ, pursuant to 11 DCMR 3108.1, for a special exception under Section 205 to establish a child development center of 80 children and three staff persons in an R-1-B District at premises 3456 Pennsylvania Avenue, S.E. (Square 5528, Lot 814).

HEARING DATES: July 21, September 22, October 13 and December 1, 1993

DECISION DATE: December 22, 1993

DISPOSITION: The Board GRANTED the application with CONDITIONS by a vote of 4-0 (Craig Ellis, Maybelle Taylor Bennett, George Evans, and Angel F. Clarens to grant; Laura M. Richards not voting, having recused herself).

MODIFICATION ORDER

The Board granted the application subject to twelve conditions by its Order dated June 3, 1994. Condition Nos. 8, 9 and 10 of the order read as follows:

8. Prior to the issuance of the certificate of occupancy for the use, the applicant shall present to the Zoning Administrator an executed easement demonstrating that the applicant has right-of-way over the triangular portion of the driveway located on Lot 16 in Square 5528.
9. Prior to the issuance of the certificate of occupancy, the applicant shall submit to the Board for its review and approval, a landscaping plan demonstrating its efforts to screen the guardrail along the east side of the Pennsylvania Avenue access, to protect existing trees, and to prevent soil erosion. Prior to the submission of such landscape plan to the Board, the applicant shall seek appropriate review of such plan from the Department of Public Works with respect to the proposed plantings in the public space between the applicant's property and Pennsylvania Avenue.
10. Prior to the issuance of the certificate of occupancy, the applicant shall submit a plan detailing the play area to be used and the type of fencing proposed for the property line along 38th Street for the Board's review and approval. In addition, the applicant shall present the plans for the play area to the D.C. Department of

Consumer and Regulatory Affairs to ensure that the proposed space meets the minimum required area per child for the proposed use.

By submission dated June 16, 1994, the applicant's representative requested that the Board reconsider Condition No. 8 and provided plans and correspondence to demonstrate compliance with Condition Nos. 9 and 10.

With respect to Condition No. 8, the applicant's representative advised the Board that attempts to enter into an easement with the adjacent property owner regarding the applicant's right-of-way over the triangular portion of the driveway located on Lot 16 in Square 5528, have not been successful. The applicant's representative noted that 11 DCMR 2117.8(c)(2) provides that the minimum width of a driveway which provides access to required parking spaces shall be not less than twelve feet if designed for one-way circulation. The narrowest portion of the applicant's rear driveway is in excess of thirteen feet. By memorandum to the Zoning Administrator dated June 8, 1994, the District of Columbia Department of Public Works indicated that the proposed driveway aisle width complies with the requirements of 11 DCMR 2117.8(c)(2) and that Condition No. 8 of the Board's order is therefore, not warranted.

With respect to Condition No. 9, the applicant's representative submitted a site plan demonstrating the applicant's efforts to landscape the site, to screen the guardrail, to protect existing trees, and prevent soil erosion. By memorandum dated March 25, 1994, the Public Space Permits and Records Branch of the D.C. Department of Public Works offered no objection to the proposed site plan. DPW suggested that the guard rail be set back ten feet from the sidewalk to the bottom of the driveway ramp because of the sharp change in grade of the site.

With respect to Condition No. 10, the applicant's representative submitted a site plan showing the location of the play area, including the public space located within the existing chain link fence along 38th Street. The Service Facility Regulation Administration of the D.C. Department of Consumer and Regulatory Affairs, by its pre-inspection survey dated August 13, 1994, indicated that the applicant met the requirements for outside play space for 83 children. The applicant's representative requested that the Board permit the retention of the existing chain link fence which is located on public space along 38th Street. The Public Space Permits and Records Branch of the D.C. Department of Public Works, by memorandum dated March 25, 1994, indicated the existing chain link fence could not be replaced with a solid masonry wall. The DPW noted that the only type of wall permitted on public space is a retaining wall designed to retain earth. The DPW noted that the existing fence could be replaced with an open

design fence of wood or wrought iron restricted to a height of 42 inches. The DPW noted that the applicant could seek approval of a fence up to seven feet in height provided it has a 50 percent open design subject to variance approval from the Advisory Neighborhood Commission and the D.C. Public Space Committee. No fencing along the applicant's property line, which bisects the proposed play area, was proposed.

There was no response to the applicant's motion for modification.

Upon consideration of the motion, the record in the application and its final order, the Board concludes, with respect to Condition No. 8 that the applicant meets the minimum width requirements for the proposed one-way driveway and, therefore, the easement with the adjoining property owner is not required. The Board further concludes that the proposed landscaping plan is adequate to meet its concerns with respect to screening the guardrail, protection of existing trees, and soil erosion as required by Condition No. 9. With respect to Condition No. 10, the Board concludes that the applicant's submission does not adequately address its concerns. The applicant's submission offers the retention of the existing chain link in the public space along 38th Street because a solid brick wall would not be allowed in public space except if necessary to retain earth. The applicant failed to address whether it considered other types of fences which would be permitted in the public space area or if appropriate fencing could be located along its property line. The applicant also failed to demonstrate to the Board whether the required minimum play area per child can be accommodated on its own property without the use of public space.

For the foregoing reasons, the Board hereby **ORDERS** that the motion for **MODIFICATION** is **GRANTED**, in part. The Order of the Board dated June 3, 1994, is hereby amended, as follows:

- a. Condition No. 8 shall be deleted.
- b. Condition No. 9 shall be modified to read as follows:
 9. The applicant shall provide appropriate landscaping as shown on the plan marked as Exhibit No. 64-A of the record, to screen the guardrail along the east side of the Pennsylvania Avenue access, to protect existing trees, and to prevent soil erosion.
- c. Condition Nos. 9 through 12 shall be renumbered to reflect the deletion of Condition No. 8.

BZA APPLICATION NO. 15838
PAGE NO. 4

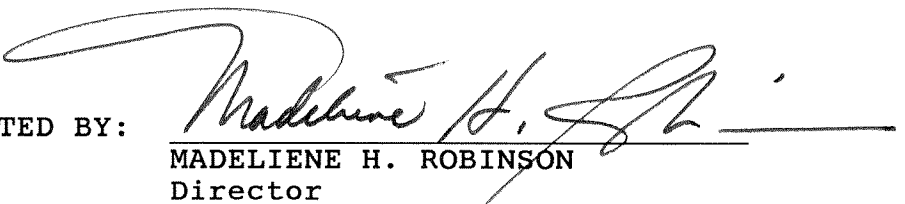
In all other respects, the Order of the Board dated June 3, 1994 shall remain in full force and effect.

DECISION DATE: July 6, 1994

VOTE: 4-0 (Angel F. Clarens, Craig Ellis, George Evans and Maybelle Taylor Bennett to grant, in part; Laura M. Richards not voting, having recused herself).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER: JUL 14 1994

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15838Ord/SS/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15838

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on JUL 14 1991 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

John Leslie, Jr., Pastor
6311 13th Street, N.W.
Washington, D.C. 20011

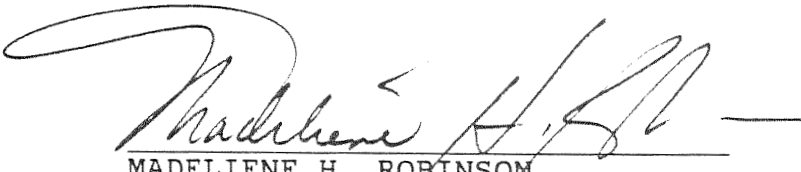
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Howard Green, Sr.
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Herbert Boyd, Jr., Chairperson
Advisory Neighborhood Commission 7-B
3200 S Street, S.E.
Washington, D.C. 20020


MADELIENE H. ROBINSON
Director

DATE: JUL 14 1991